

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1552 OF 2022

Shri Bandu Shrawan Choudhari

..VS..

Shri Ashok Bhaiyyalal Bihave and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.F. Bhagwani, Advocate for the petitioner.

CORAM : ROHIT B. DEO, J.

DATED : 31/03/2022.

The petitioner is assailing the order dated 01.09.2021 rendered by the Motor Accident Claims Tribunal (M.A.C.T.), Gadchiroli, rejecting the application preferred by the petitioner seeking dismissal of the execution petition on the ground that the execution petition is filed beyond the period of limitation.

2. The respondent Mr. Ashok Bihave filed Execution M.A.C.P. 13 of 2020 for recovery of the compensation amount awarded in Claim Petition 4 of 2005, by Judgment and Award dated 15.09.2008.

3. The petitioner preferred an application Exhibit 15 contending that as per Article 136 of the Limitation Act, 1963, the Execution Petition ought to have been filed within 12 years from the judgment and Award and since the petition is filed one month and eight days after the expiry of 12 years, the same be dismissed.

4. The M.A.C.T. relied on the decision of the Hon'ble Supreme Court in case of *New India Assurance Co. Ltd. vs. C. Padma and anr. (2003) 7 SCC 713* and rejected the application.

5. Faced with the obstacle of the decision in *New India Insurance Company Limited*, which enunciates that there is no period of limitation prescribed under the Motor Vehicle Act 1988, and since the legislation is a beneficial one, the concept of limitation cannot be introduced in the self-contained Act, the learned Counsel Mr. Bhagwani argues, which incidentally was not the argument in the Executing Court, that even if the period of limitation is not prescribed, the application for execution must be preferred within a reasonable period. Mr. Bhagwani invites my attention to the decision of the Hon'ble Supreme Court in case of *Purohit and Company vs. Khatoonbee and anr. (2017) 4 SCC 783*.

6. The petition is liable to be dismissed for reasons more than one, which I proposed to spell out thus :

7. Firstly, the ground that the execution petition is not preferred within a reasonable period, is not raised. The only ground in the application seeking dismissal of the execution, was that Article 136 of the Limitation Act applies, and the execution petition is preferred beyond the period of 12 years.

8. It is well settled that what is a reasonable period cannot be decided by a strait-jacket formula. What period is reasonable would essentially depends on the factual matrix.

9. In this view of the matter, the submission that the execution application was not preferred within a reasonable period, cannot be entertained in the petition. Such a submission may involve questions of fact, and ought to have been raised before the Tribunal.

10. Secondly, the articulation in case of *Purohit (supra)*, is in the context of a claim and not execution of an Award. It was after more than 28 years of the accident that the claim petition was preferred. It was submitted that drawing analogy to the judgment rendered under the Consumer Protection Act, 1986 and the Industrial Disputes Act 1947, that while no limitation is prescribed, the claim must be live and surviving. It is in this context that the Supreme Court articulated that the claim lodged after a period of 28 years, was not live and surviving and was stale.

11. The Supreme Court articulated that a claim raised before the M.A.C.T. can be considered to be genuine only, if the claim is live and surviving and that the individual concerned must approach the Tribunal within a reasonable time. Pertinently, the Supreme Court further observes that the question of reasonability would naturally depend on the facts and circumstances of each case. In my considered view, the execution petition cannot be said to be unreasonably delayed. What is reasonable would have to be considered in the context of the limitation of 12 years, which is prescribed under Article 136 of the Limitation Act, 1963. While the said Article may not apply, an execution which is preferred one month and eight days after the expiry of the period of limitation prescribed under Article 136 of the Limitation Act,

1963, cannot in my considered view, be unreasonably delayed.

12. The articulation in *Purohit (supra)*, must be understood in the context of the submission that if a litigant is permitted to approach the Tribunal at any point in time, dead claims may flood the dockets of the Tribunal. While deciding the question of reasonable period, it will have to be borne in mind that the claim is already adjudicated and an award made. Non-suiting a person in whose favor the Tribunal has made an Award of compensation, must be ordinarily shunned. While a claim may be clouded with doubt, if the claim is lodged after an unreasonable period, a person in whose favour an Award is already made, hardly has a reason to sit over the award and to prefer execution belatedly. In my considered view, the articulation in *Purohit (supra)* does not, as its attempted to be argued, dilute the ratio of the Supreme Court decision in New India Assurance Company Ltd.

13. The petition is dismissed.

JUDGE

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